

ATTORNEY DOCKET NO.: 056179-5004

Application No.: 09/044,426

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REMARKS

The final Office Action issued February 26, 2003, has been reviewed and the comments of the U.S. Patent and Trademark Office have been considered. Claims 1-13 remain pending in the application and are submitted for reconsideration by the Examiner.

Applicants respectfully point out that the finality of this Office Action should be withdrawn because it is premature. The outstanding Office Action is in response to a Continued Prosecution Application (CPA) filed on May 6, 2002. Accordingly, the Office Action is a first action on the merits that cannot properly be made final. It appears that the indication that the Office Action is final may have been in error because, while the Office Action Summary (Form PTO-326) indicates a final Office Action, there is no statement in the body of the Office Action that the Office Action is made final. For these reasons, Applicants request that the finality of the Office Action be withdrawn, that this response be entered and that the application be reconsidered.

Claims 1-13 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,032,084 to Anderson et al. (Anderson). This rejection is respectfully traversed in view of the amendments above and the comments below.

Applicants filed concurrently herewith a petition under 37 C.F.R. § 1.78(a)(3) to accept unintentionally delayed claim of priority under 35 U.S.C. § 120 to Anderson. Upon grant of Applicants' petition, Anderson is no longer eligible as prior art under 35 U.S.C. § 102(e). Therefore, Applicants respectfully request the withdrawal of the rejection based on Anderson and an indication that claims 1-13 are allowable.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests the reconsideration and reexamination of this Application and the prompt allowance of pending claims 1-16. Applicant invites the Examiner to contact Applicant's undersigned representative if there are any issues that can be resolved via telephone conference.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached pages are captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

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EXCEPT for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

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